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November 22, 2005

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-9303
Attn: Jonathan G. Katz, Secretary

Re: **File No. S7-09-05 – Comments on Commission Guidance Regarding Client Commission Practices under Section 28(e) of the Securities Exchange Act of 1934**

Ladies and Gentlemen:

Eze Castle Software, Inc. applauds the Securities and Exchange Commission's recent Interpretive Release regarding the application of Section 28(e) of the Securities Exchange Act of 1934 (the "Exchange Act") to client commission practices. In particular, we welcome the Commission's clarification of the definitions of "research", "brokerage" and "mixed use" in the context of certain software and related services.

We write today to clarify for the Commission what services are included in our suite of software products and services, commonly referred to as an "order management system" or "OMS". Further, in light of this clarification of our OMS, we write to request that the Commission modify its view regarding the OMS to the effect that a suite of software products and services described in this letter encompasses assistance in the formulation, modification or institution of orders, the "research" prong of Section 28(e) as well as the order communication, execution and settlement process, the "brokerage" prong of Section 28(e).

We do not object to the general definitions and guidelines set forth in the Interpretive Release. Rather, we ask the Commission to reconsider specific statements it made regarding order management systems. The Commission on page 35 of the Interpretive Release specifically stated ". . . order management systems . . . used by money managers to manage their orders (including [order management systems] . . . obtained from third party vendors . . . are not eligible for the safe harbor as "brokerage" because they are not sufficiently related to order execution and fall outside the temporal standard for "brokerage" under the safe harbor." Later in the same paragraph, the Commission goes on

to conclude “. . . [t]he products and services described in this paragraph are properly characterized as “overhead” and are ineligible under Section 28(e).”

We have organized our letter as follows:

- In Part I, we briefly describe how the OMS has evolved over time.
- In Part II, we break out certain functionality of our OMS offering into three general buckets representing different aspects of the trade process: (i) order creation; (ii) order execution; and (iii) order settlement.
- In Part III and IV, we provide our arguments as to why specific aspects of our OMS constitute “research” and “brokerage”, respectively.
- In Part V, we offer our concluding thoughts including the possible ramifications of exclusion of order management systems from the safe harbor of Section 28(e).

I. ORDER MANAGEMENT SYSTEMS IN GENERAL

We notice that the Commission does not define what constitutes an “order management system”. Nor is that term to our knowledge, formally defined elsewhere. So, in this letter we seek to clarify that our software product and service offering, which we refer to as an OMS, has certain aspects or components which the Commission may not have known to be part of an OMS and which the Commission may not have intended to preclude from the Section 28(e) safe harbor.

Eze Castle Software provides a wide variety of software products and services to money manager clients. We often describe our suite of software products and services as an order management system or OMS. In the late 1980’s when order management systems were first introduced, they were largely focused on the tracking of orders through an electronic trade blotter. Over time, however, the general concept of an order management system has expanded significantly. In the last decade, Eze Castle Software’s OMS has evolved to include much broader functionality extending all the way from assisting the portfolio manager’s generation of investment ideas to the automated settlement and clearing of trades.

In light of the definitions set forth in the Interpretive Release, our OMS we offer to money manager clients should constitute a service with certain aspects that provide lawful assistance in the money manager’s investment decision-making process and therefore constitute “research” services and other aspects that fall within the temporal definition of execution and therefore constitute “brokerage” services.

II. DESCRIPTION OF THE EZE CASTLE SOFTWARE OMS

Eze Castle Software’s suite of software products and services provides functionality for the major steps in the money manager’s investment process: (i) order creation; (ii) order

execution; and (iii) order settlement. The following description of certain functionality contained in our OMS has been grouped into these three categories:

Order Creation:

- A market data integration tool embedded in the money manager's order blotter that:
 - fully integrates market data to display tick-by-tick last sale prices, volumes, bids and asks, target action prices, real-time - time stamping with bid and offer quote data and indications of interest from sell side brokers, and
 - provides alert or warning tools if target action price thresholds are crossed;
- A portfolio profit/loss and risk monitoring tool that receives real-time intra-day market data to:
 - update security prices, positions, risk ratios, and hedge ratios for the money manager,
 - display real-time intra-day profit and loss for each security, sector and portfolio, and
 - calculate real time intra-day best and worst performing securities, sectors and portfolios;
- A cash monitor tool that incorporates real-time market data updates from the money manager's order blotter to calculate real time intra-day current and projected cash balances based on pending or hypothetical orders and that enables the money manager to balance buy and sell activity within a portfolio;
- A comprehensive portfolio, security, and strategy modeling and analysis product that:
 - performs real-time quantitative analytics including portfolio construction modeling (with hypothetical portfolios and portfolio construction), asset allocation modeling (with hypothetical asset allocations), rebalancing and extensive "what if" analysis, and
 - calculates real-time intra-day portfolio valuations;
- A pre-trade screening and analytic tool that monitors and confirms SRO and regulatory requirement compliance and assists the money manager in conforming to pre-determined portfolio strategies including appropriate risk ratios and asset concentrations;
- Functionality that integrates the data within the money manager's order blotter with pre-trade analytic tools;

Order Execution:

- A list trading tool that manages list orders, performs list order trading and performs wave trading including transmission of multiple waves of portions of uncommitted shares from one list to one broker or multiple brokers;
- Software functionality that integrates the money manager's order blotter with a message-based connectivity service enabling sell-side brokers to send to and receive from money managers electronic trading messages (via FIX) including orders, executions, allocations, and indications of interest;
- Software functionality that integrates the money manager's order blotter with order routing tools and algorithmic trading tools enabling the money manager to initiate orders directly from the money manager's order blotter;

Order Settlement:

- A data aggregation, management, transfer, and STP service that receives, translates, aggregates and transmits trade data, allocation messages and positions to and from third-party and internal systems, prime-brokers, custodians and other administrators enabling trade clearing, account settlement and updating; and
- Reconciliation functionality that:
 - compares trade orders with position data sent back to the money manager (a.k.a. post-trade matching), and
 - enables accurate crediting of securities and funds to the money manager's accounts and daily comparisons of start-of-day positions.

III. WHY SPECIFIC ASPECTS OF OUR OMS CONSTITUTE "RESEARCH"

First, we ask that the Commission clarify that the last sentence of page 35 of the Interpretive Release does not preclude a money manager from considering a suite of software products and services within our OMS with functionality described in Part II of this letter under "order creation" as "research" services under the safe harbor. The Commission sets forth the Section 28(e) definition of "research" as including: ". . . *analyses and reports* concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and the performance of accounts . . ." but is limited to ". . . advice, analyses and reports with "intellectual and informational" content and reflects expression of reasoning or knowledge . . ." The Commission further states: ". . . any research services must provide lawful and appropriate assistance to the money manager in the performance of his investment making decision responsibilities . . ." In particular, the Commission notes that "[q]uantitative analytical software and software that provides analyses of securities portfolios would be eligible under the safe harbor if they reflect the

expression of reasoning or knowledge relating to the subject matter that is included in Section 28(e)(3)(A) and (B).”

In the Interpretive Release, the Commission sets forth specific examples of “research” including:

- Services providing reports of eligible subject matter including market data, such as stock quotes, last sales prices, and trading volumes . . . ; and
- Analyses of the performance of accounts not “used for marketing purposes”.

Applying the Definition of “Research” to our OMS:

Our OMS includes various functions integral to the order creation process that constitute quantitative analytical software providing analysis of securities portfolios and reflect an expression of reasoning or knowledge. This functionality provides lawful and appropriate assistance to the money manager in the investment decision-making process. Moreover, our OMS’s tools and functionality are either the same or very similar to examples cited by the Commission in the Interpretive Release as falling within the definition of “research”.

- Our market data integration software functionality with its alert and warning tools and real-time market stamping enables the money manager to make or revise investment decisions on an intra-day basis and assess important factors including the quality of executions.
- Our portfolio profit/loss and risk monitoring tool enables the money manager to monitor and react to real-time intra-day changes to important risk ratios, hedge ratios and risk characteristics which result in reactive trades and revised intra-day trading strategies.
- Our cash monitor tool enables the money manager to update or revise his intra-day investment decisions based upon analyses of actually available cash versus projected cash. It assists in portfolio strategy, performance of accounts and the investment decision-making process.
- Our portfolio, security, and strategy modeling and analysis product enables money managers to create model portfolios and perform “what if” analysis with respect to hypothetical rebalancing, and asset allocation. For example, this product enables a money manager to analyze how a proposed trade would alter his exposure in a particular country, to a particular currency or to a particular industry. This leads to updated investment decisions.
- Our pre-trade screening, analytic and compliance tool that monitors and confirms SRO and regulatory requirement compliance and conformity with pre-determined portfolio risk ratio and asset concentration strategies enables the money manager to

test and revise his investment decisions both before sending a trade to the trading desk and throughout the trading day.

- Our pre-trade analytic interfaces integrate data from the money manager's trade blotter with pre-trade analytic tools enabling a money manager to analyze a proposed trade and its potential execution cost impact.

In short, there is a common theme underlying the order creation components and tools of our OMS - they fit within the statutory definition of "research" and provide lawful assistance to the money manager in his or her investment decision-making process.

IV. WHY SPECIFIC ASPECTS OF OUR OMS CONSTITUTE "BROKERAGE"

We also ask that the Commission clarify that a software and service offering like our OMS as described herein, may be considered a service with certain aspects that constitute "brokerage" services. A person provides "brokerage" services available for safe harbor treatment under Section 28(e) ". . . insofar as he "effects securities transactions and performs functions incidental thereto (such as clearance, settlement, and custody) or required in connection therewith by the rules of the Commission or a self-regulatory organization of which such person is a member or participant." The Commission sets forth a temporal standard in the release stating that "brokerage begins when the money manager communicates with the broker-dealer for the purpose of transmitting an order for execution and ends when funds and securities are delivered or credited to the advised account . . ." More specific to our products and services, the Commission points out in Footnote 97 that ". . . brokerage services can include . . . trading software where [it is] used to transmit orders to the broker, because this transmission of orders has traditionally been considered a core part of the brokerage service."

The Commission cites the following examples of "brokerage" services:

- post-trade matching;
- electronic communication of allocation instructions between institutions and broker-dealers;
- routing settlement instructions to custodian banks and broker-dealers' clearing agents;
- services required by the Commission or SRO rules (i.e. electronic confirmation and affirmation of institutional trades required in settlement);
- message services used to transmit orders from broker-dealers for execution; and
- trading software operated by a broker-dealer to route orders to market centers and algorithmic trading software; and
- connectivity service between the money-manager and the broker-dealer and other relevant parties (including FIX connections) and message services used to transmit orders to broker-dealers for execution.

Applying the Definition of “Brokerage” to our OMS:

Our OMS includes many aspects that not only fall within the temporal definition of “brokerage” but represent integral parts of the trade execution and trade settlement process. Thus, we seek from the Commission more detailed guidance that clarifies and perhaps narrows the broad generalization set forth on page 35 of the Interpretive Release that “. . . order management systems . . . used by money managers to manage their orders (including [order management systems] . . . obtained from third party vendors . . . are not eligible for the safe harbor as “brokerage” because they are not sufficiently related to order execution and fall outside the temporal standard for “brokerage” under the safe harbor.”

In particular, the aspects of our suite of software products and services described below are either the same or very similar to the examples explicitly described in the Interpretive Release as “brokerage” services or fall within the temporal definition put forth by the Commission. Moreover, there are many aspects of our OMS that are as much a part of the execution process as “. . . trading software operated by a broker-dealer to route orders to market centers . . .” For example:

Order Execution:

- Our list trading tool (with its wave trading components) is instrumental in the money manager’s communication of his or her trade order to the sell-side broker. For example, if a money manager has decided to buy or sell a basket of stocks at the same time, the list trading tool allows simultaneous communication of orders for all stocks in the designated basket to one or more brokers. This therefore fits within the temporal definition of “brokerage”.
- Our software functionality that integrates with connectivity services provided to the sell-side broker is an integral part of the money manager’s initiation of the electronic communication of an order. It also is a direct interface with a service specifically cited in the Interpretive Release as an example of “brokerage” services.
- Our interface functionality with order routing and algorithmic trading tools offered by sell-side brokers are instrumental in the communication by the money manager of his investment decision to and through these tools. For example, a trader for a money manager can utilize our interface functionality to access multiple algorithmic trading tools and order routing tools. This access in turn avails the trader to a variety of powerful tools which enhance his ability to optimize execution quality. This functionality therefore falls within the temporal definition of “brokerage” and is part of a specific example of “brokerage” services cited by the Commission.

Order Settlement:

- Our trade data aggregation, management, transfer, and STP service enables through the use of electronic interfaces between the money manager's order blotter and third parties all of the following examples of "brokerage" cited in the Interpretive Release:
 - post-trade matching,
 - electronic communication of allocation instructions between institutions and broker-dealers, and
 - routing settlement instructions to custodian banks and broker-dealers' clearing agents.
- Our reconciliation functionality provides post-trade matching services as well as other instrumental functions to ensure that the proper amount of securities or cash is credited to the money manager's account at the time of settlement and clearing.

V. CONCLUSION: RESPONSE TO SEC QUESTION 4 – POTENTIAL IMPACT ON INDUSTRY

As we have stated, our OMS has evolved to include a broad range of functionality that spans from the money manager's investment idea creation process all the way to order execution, settlement and clearing. In light of that, we ask that the Commission modify its view regarding the OMS to the effect that a suite of software products and services (a) described in Part II of this letter as part of the order creation process encompass assistance in the formulation, modification or institution of orders, the research prong of Section 28(e) and (b) described in Part II of this letter as part of the order execution or order settlement process encompass the order communication, execution and settlement process, the brokerage prong of Section 28(e).

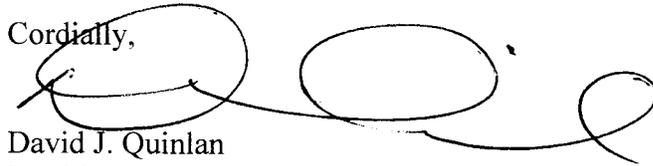
We also offer a response to Question 4 at the end of the Interpretive Release. In pertinent part, the Commission asks whether the Interpretive Release offers sufficient guidance as to the eligibility of brokerage services, functions and products eligible under Section 28(e) and how this guidance would effect existing arrangements or practices. The Commission's misperception that an OMS does not provide either "research" or "brokerage" services could have a materially adverse cost impact on many money managers, particularly smaller ones. Many of these money managers currently pay for an OMS with client commissions and avail themselves of the safe harbor under Section 28(e). A complete preclusion of the OMS from the Section 28(e) safe harbor may have a significant cost impact on smaller money managers and discourage the use of order management systems. This may in fact slow the continuing advances in electronic trading and integration of trading platforms in the securities trading industry. This, in turn, could diminish the ability of money managers to track and achieve best execution. Moreover, if the use of an OMS is discouraged,

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money managers may have a more difficult time gathering and preparing necessary data for regulatory compliance audits and examinations.

We thank the Commission for the opportunity to comment on the Interpretive Release on Client Commission Practices under Section 28(e) of the Exchange Act. If the Commission would find it helpful, we would be happy to meet in person to provide a more detailed explanation of our OMS.

Cordially,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above the typed name.

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